



TEXAS FUNERAL SERVICE COMMISSION

3RD QUARTER NEWSLETTER

March 2014-May 2014

May 2014

Howdy!

It has been a great first half of the year. This winter seemed colder than normal and I'm ready for summer. Although by the time it is August, I'll probably be tired of the multiple 100+ degree days.

We're making some changes here at the Commission. One big change is to redesign the TFSC website to make it more user-friendly. Hopefully, we can create a site that keeps you informed on what we are doing here in Austin and helps you to better run your business. As the ultimate user of the website, your suggestions will help us make the website even better.

And, we're working on a major overhaul of the rules that govern the Commission and how it operates. Check out the "Message from Legal" for how to get involved in that project.

I attended the Texas Cemeteries Association Annual Convention in Bastrop in April and I plan to be at the Texas Funeral Directors Association Annual Meeting in Galveston in June. It has been great getting to know those of you in the industry.

As always, please feel free to share your thoughts and concerns with me.

Enjoy your summer!

Yours truly,

Janice S. McCoy
Executive Director

Commission News

On April 4, 2014, Commissioner Patrick Robertson of Clarendon sent a letter to Governor Perry officially resigning from the Commission for health reasons. He had served on the Commission as an industry member since 2011.

Following is an excerpt from his letter to the Governor:

Six months after being appointed to the Texas Funeral Service Commission in 2011, I was diagnosed with end stage renal failure and subsequently began dialysis. Over the last few months, my health has begun to deteriorate to the point that I feel I can no longer effectively serve as a Commissioner. Therefore, please be informed that I am resigning my commission from the Texas Funeral Service Commission effective immediately.

I was much honored to be appointed to this Commission and have done my utmost to fulfill my role as a Commissioner. It has been an honor to represent the funeral service industry as well as to serve with such a group of outstanding people.

I feel very strongly that the Funeral Service Commission is vital to the funeral service industry and I will continue to support the Commission in its regulatory role.

The Commission thanks Commissioner Robertson for his service and wishes him good health.

Upcoming Commission Meetings

The next TFSC meeting will be held on **Tuesday, June 17, 2014**, beginning at 9:00 am in Room 2-225 of the William P. Hobby Building in Austin, Texas. The September meeting is currently scheduled for **Tuesday, September 9, 2014** at the same time and location. As usual, licensed Texas funeral directors and embalmers can receive continuing education credit for attending a Commission meeting.

A Message from Legal

The laws governing the death care industry are found primarily in Texas Occupations Code (Tex. Occ. Code) Chapter 651, Health and Safety Code Chapter 716, and Texas Administrative Code (TAC) Chapters 201, 203, 205, 207, and 209. All laws and rules can be found on the TFSC website by following the "Governing Laws" link.

These governing provisions are both statute and rules. Statute is created and amended by the Texas Legislature during a regular legislative session. Rules are enacted by the Commission through a series of open meetings and publication in the Texas Register. The Rules of the Commission clarify and specify the laws found in statute.

Rules Revision Project

The Commission is currently undergoing a rules review. The Commission's Staff Attorney Kyle Smith began to review the rules in September 2013 after he was hired. Staff's first draft of the proposed changes was distributed via the Commission website in April and the first stakeholders' meeting was held April 25, 2014. Representatives from the industry and consumers participated in the meeting.

Updates are proposed for the complaint process to make it more efficient with a quicker resolution. Additionally, the primary licensing rules were updated to make the process more effective.

Please contact the Commission if you would like to receive a copy of the first draft of the proposed rules or would like to be included in future stakeholders' meetings. A second meeting is currently being scheduled for June. Check the website for updates.

Legal Update

Kyle Smith, TFSC Staff Attorney, has been hard at work clearing the complaint cases that had backlogged at the State Office of Administrative Hearings (SOAH) prior to his joining the Commission. There are 12 transferred complaint cases currently awaiting action - - either mediation or a formal hearing at SOAH. To date, he has completed a total of 13 cases through the SOAH hearings process and has settled three other cases through mediation. There are a total of six cases currently set for hearing at SOAH.

Criminal Convictions

TAC §203.33(j) requires a current licensee to disclose in writing any conviction at the time of renewal or no later than 30 days after judgment in the trial court, whichever date is earlier. It also requires an applicant to disclose in writing any conviction against him/her at the time of application.

The Commission may suspend or revoke a license or refuse to issue a license on the grounds that the licensee or applicant has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the occupation of funeral director or embalmer.

Public Information

The Public Information Act gives a person the right to access government records without disclosing why the records are being requested. While all government information is presumed to be available to the public, certain exceptions may apply to the disclosure of the information. In the case of the TFSC, information concerning open complaints and investigations is exempt from disclosure.

More detailed information on the Public Information Act may be found at the Office of the Attorney General's web site: <https://www.oag.state.tx.us/open/requestors.shtml>

Public information requests can be directed to Kathy Sparks, PIO, at (512) 936-2469 or kathy@tfsc.texas.gov.

A Message from Licensing

The Licensing Division fulfills the TFSC's mission to protect the public from deceptive practices by performing licensing, registration, examination and continuing education functions.

The current licensing work processes include (1) processing all initial provisional license applications, reciprocal applications and reinstatement applications for funeral directors/embalmers to include DPS/FBI fingerprint background checks; (2) administering examinations for all individual licensees; (3) renewing individual licenses; (4) ensuring licensees are current with their continuing education requirements and (5) processing all initial/renewal establishment applications to include funeral homes, commercial embalming facilities, crematories and certain cemeteries.

Funeral Establishment

A new license is required if a funeral home or commercial embalming facility builds a new facility or changes the location of a current facility. Necessary documentation for a license includes Authorization to Embalm/Embalming Case Report forms, General/Casket/Outer Burial Container/Urn price lists, a Funeral Purchase Agreement, and Fire/Health Inspection reports. Tex. Occ. Code §651.351 outlines the requirements that must be met before a funeral establishment can be licensed.

TAC §203 clarifies and expands on these requirements, specifically TAC §203.14 on how to display funeral merchandise in a selection room, TAC §203.21 on providing *Facts about Funerals* brochures, and TAC §203.35 on chapel requirements. TAC §203.7 provides guidelines on setting up an establishment's required price lists.

Additionally, each funeral home or commercial embalming establishment must meet the building, fire safety and health standards of both the state and the city in which it is located.

FDIC/EIC

Each licensed funeral establishment at all times must have a designated funeral director in charge (FDIC) who is ultimately responsible for compliance with all mortuary, health and vital statistics laws in the funeral establishment. Commercial Embalming Establishments also must at all times have a designated embalmer in charge (EIC).

The FDIC/EIC must be designated at the time an establishment is initially licensed. Any time a FDIC/EIC changes the establishment must notify the Commission by submitting the prescribed forms within 15 days. All forms - Appointment of FDIC/EIC and Removal of FDIC/EIC - can be found on the TFSC website by following the "Licensing" link.

If a provisional licensee leaves the employment of a FDIC/EIC, the FDIC/EIC must file an affidavit that shows the length of time the provisional license holder was employed and the number of cases handled within 15 days of employment termination.

Renewals & Reinstatements

Funeral Directors and Embalmers can renew a license online. To renew online, go to www.hpc.state.tx.us/message.php or follow the links from the TFSC website. The website details what information is required for license issuance.

Licensees who renew online and do not receive a license in the mail should contact the Commission. Be prepared to provide the transaction receipt received upon completion of renewal online. Without a receipt, the Commission cannot trace the renewal.

A license that has been expired one year or more may be reinstated by completing the required application; retaking and passing the applicable exam; paying all applicable fees; submitting to an FBI background check and completing required continuing education. Applicants for reinstatement will be responsible for supplying the Commission with all necessary documents as licensing files are only kept for one year past the expiration date.

Continuing Education

All active license holders must complete 16 hours of continuing education prior to a license being renewed. Licensees who are 65 years of age or 75% disabled are required to obtain 10 hours of continuing education. Inactive retired licensees are not required to take any continuing education.

Starting in September 2014, the Commission will begin a random audit of continuing education credits. Each month 10 percent of individual licensees will receive a letter with the renewal notice stating that he/she will have to submit his/her certificates to the Commission prior to renewal.

Failure to complete required continuing education will delay renewal of the license and may cause additional fees and penalties to be imposed. It is the sole responsibility of the licensee to submit continuing education certificates to the Commission, even if the licensee renewed online.

A licensee can receive up to four hours of continuing education credit per renewal period for attendance at Commission meetings. The credit is hour for hour of attendance and the licensee must sign in and sign out. The continuing education credit will be uploaded to the Commission's database in lieu of a certificate being mailed to attendees.

Publications

All licensed funeral homes are required to provide the TFSC promulgated *Facts about Funerals* brochure to customers when funeral services are discussed. Funeral homes must order the brochure from the Commission.

The newly updated State of Texas Funeral Services Law Book (Effective Sept. 2013) can be purchased for \$15.00. The law book includes the Commission's governing statute but does not include the Rules of the Commission. Rules of the Commission can be accessed through the TFSC website.

Publication order forms can be found on the TFSC website by following the "Agency News and Information" link to the Publication Order Form. Please use this order form to avoid delays in shipment of orders. All orders must include a physical shipping address or the orders will not be processed.

Cemetery

A cemetery operated as a perpetual care cemetery means that a perpetual care fund for its maintenance has been established in conformity with state law. Perpetual care means the maintenance, repair and care of the cemetery.

The Commission does not license perpetual care cemeteries. That function is handled by the Texas Department of Banking (DOB) who provides a list of perpetual care cemeteries to the TFSC.

Beginning in January 2014, the DOB instituted a system for registering cemetery brokers after legislation was enacted during the 2013 Legislative Session. A cemetery broker is defined as a person who sells the exclusive burial right in a cemetery for another person, essentially an unaffiliated third party. The new law further clarifies the procedures a cemetery broker must take in documenting the sale of a plot with a cemetery organization. According to DOB, by the end of April 2014, only three people have registered as cemetery brokers in Texas.

Health & Safety Code §711.041 provides that any person who wishes to visit a cemetery or private burial grounds for which there is no public access shall have the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds. The owner of the property may determine reasonable hours of visitation and routes needed to access the cemetery.

Crematory

Information on becoming licensed as a crematory is on the TFSC website by following the "Cemeteries and Crematories" link. Once an application is complete and all required documentation received, a TFSC inspector will contact the establishment to schedule an inspection. Only after a license has been issued may the manufacturer train the personnel at the crematory establishment.

Before a crematory can be licensed by the TFSC, the owner must submit the manufacturing specifications of the chamber to the Texas Commission on Environmental Quality (TCEQ) and obtain a Permit by Rule. Specific consumer complaints about a crematory emitting an odor or smoke are referred to TCEQ for investigation of air quality.

Tex. Occ. Code §651.658 requires all crematories to report in writing to the TFSC, no later than January 30th every year, an annual report of the total number of cremations performed for the prior calendar year. The report may be faxed, emailed or sent regular mail with a postmark no later than January 30th. A late penalty of \$100 PER DAY will be imposed until the annual report is received. The TFSC has no authority to waive or reduce the late fee.

CFR Title 40 Part 266 of the United States Federal Code of Regulations creates standards for the proper disposal of post-cremation metal materials that come under the EPA's listed waste category, including gold, silver, platinum, palladium and iridium. Such waste is typically found in post cremation dental scrap. A crematory is liable for the correct handling and processing of such material.

Duplicate License

A licensee shall conspicuously display his/her license in each place of business at which the licensee practices. A licensee must submit an application for a duplicate license and pay the \$25.00 fee for each duplicate license requested. All licenses displayed must be the original embossed license issued by the Commission and may not be a copy of the original license.

Provisional License Program

The term of the provisional license program is a minimum of 12 consecutive months not to exceed 24 months. A provisional licensee is required to report directly to his/her FDIC or EIC, whichever is applicable.

It is the responsibility of the provisional licensee and the FDIC/EIC to schedule case work sufficient for the successful completion of the provisional program. Additionally, it is the responsibility of the FDIC/EIC to ensure the provisional licensee under his/her employment has direct supervision at all times.

If a provisional licensee changes funeral homes or adds an additional establishment, the licensee must fill out and return the "Amendment to Registration of Provisional License" form.

National Board and Texas State Board Information

A provisional licensee **MUST** have official certificates from International Conference of Funeral Examining Boards (the Conference) on file with a passing score of 75% or better on each exam taken in order to exit the provisional program. In order to sit for the National Boards or Texas State Board, eligible candidates must be submitted to the Conference by his/her mortuary school. Provisional licensees who have not taken the National Board/Texas SBE should contact his/her school for eligibility updates.

The National Board Exams and the Texas State Board Exam (SBE) are given at Pearson Professional Centers. Test center locations can be found at www.pearsonvue.com/theconference.

Texas Mortuary Law Exam

The Texas Mortuary Law Exam (law exam) is given in Austin 10 times a year and twice a year at accredited schools if requested by the school. Applications for the law exam can be found on the TFSC website by following the "Texas Mortuary Law Exam" link. Please note that all fees are NON-REFUNDABLE. If a provisional licensee fails to appear, the fee will not be refunded and a new application and fee will be required to reschedule the examination.

A provisional licensee **MUST** have a passing score of 75% or better on the law exam in order for him/her to exit the provisional program. A law exam score is only valid for 24 months from the date it was taken. If a provisional licensee does not have a VALID unexpired test on file when exiting the program, he/she must retake the law exam.

Law exam scores are posted on the TFSC website. Follow the "Texas Mortuary Law Exam" link and then the "Law Exam Results" link for results. A licensee can access his/her results by using the last four digits of his/her social security number.

Exiting the Provisional Program

The following documents must be on file to exit the provisional program:

- Certified transcript that shows the degree awarded and the date it was conferred
- Certificate(s) from the International Conference of Funeral Examining Boards providing National Boards/Texas State Board scores (75% or better)
- Unexpired Texas Mortuary Law Exam score (75% or better)
- A copy of case logs (TFSC does not require case reports however a licensee must keep copies of those case reports for two years)
- A letter from the FDIC/EIC stating the provisional licensee has completed all requirements and is ready to exit the program

Once these documents are received, TFSC staff will audit the provisional licensee file. If everything is complete, staff will provide notification of necessary fees to become fully licensed in Texas and will require FDIC/EIC to complete affidavit.

Until all administrative paperwork is returned and reviewed by the Commission, licensees REMAIN on provisional status.

Public Licensing Information

A person can verify that an individual/establishment is licensed with the Commission by accessing the TFSC website and following the “Public Licensee Search” link.

A Message from Compliance

The Compliance Division fulfills the TFSC’s mission to protect the public from deceptive practices by inspecting establishments and investigating complaints. The compliance work processes include (1) ensuring each licensee is in compliance with the rules and regulations that govern the death care industry in the state of Texas through investigation of consumer complaints and (2) inspections of all establishments licensed by the TFSC.

Statutorily mandated risk based inspections of all licensed establishments are conducted at least once every two years. The inspection process includes a survey of the physical plant, a check of a sample of case files and a comprehensive review of all required documents.

Any person can file a complaint against an individual or establishment licensed by the TFSC. The TFSC complaint process can be found on the website by following the “Complaint Procedures” link.

After the Commission receives a complaint against a licensee or an establishment, the licensee is sent notice of the complaint and given 15 days to supply certain requested documentation in response. Failure of the licensee to provide that information could result in administrative action, including fines, against the license(s) involved for non-compliance.

Disposition of a Body

One of the most common questions received by the Compliance Division relates to who has the right to control the disposition of a decedent's body. This information is found in the Health and Safety Code §711.002. Additionally, Subsection (k) outlines the appropriate measures to be taken if there is a dispute among the people who may have the right to control the disposition of a decedent's body.

Welcome to TFSC's Newest Investigator

The Compliance Division welcomed Jeffrey Morales as an Investigator on April 15, 2014. Jeff has served in the Navy since 2005 and continues to serve.

For his noteworthy service, Jeff has been awarded the Navy and Marine Achievement Medal, Global War on Terrorism Medal, Global War on Terrorism Expeditionary Medal, Military Outstanding Volunteer Service Medal (2), Navy and Marine Core Overseas Service Ribbon (3), Navy Good Conduct Medal (2), National Defense Medal, Marksmanship Ribbon for M9 and M14, Coast Guard Joint Service Medal, Joint Service Commendation Medal, Information Dominance Warfare PIN, and Expeditionary Warfare PIN.

Jeff previously worked for the Texas Commission on Fire Protection, Texas Forest Service, Texas Department of Public Safety and Texas Comptroller's Office. He has an A.A.S. in Fire Science, B.A. in Criminal Justice and an M.B.A. Jeff is currently enrolled at Austin Community College taken course to upgrade from EMT-B to EMT-P.

Jeff is the father of two sons Hayden, age 13, and Hudson, age 9, daughter Aubrey 9 months old, step-daughter Valerie Diaz age 15, step-son Aiden Diaz age 5, and step-son Gabriel Rendon age 19.

The Commission appreciates everyone's patience as the agency worked through the staff turnover issues that occurred over the past five months.

For Your Information

Military Funeral Honors

Anyone providing Military Funeral Honors for an eligible veteran should visit the Department of Defense Military Funeral Honors website at www.dmdc.osd.mil for information. The website serves as a resource tool for funeral directors as they assist veterans' families by arranging Military Funeral Honors. The core elements of the Funeral Honors ceremony, which will be conducted on request, include: Flag Folding, Flag Presentation and the Playing of Taps.

If the family of an eligible veteran requests Funeral Honors through their funeral director, the funeral director should contact the appropriate Military Service to arrange for the Funeral Honors detail. The Department of Defense has established a toll free line (1-877-MIL-HONR) for use only by Funeral Directors to request honors. The Services request at least 48-hours in order to organize the Funeral Honors detail.

Texas State Veterans Cemetery

Veterans are eligible to be buried in a Texas State Veterans Cemetery. Funeral homes should work with the families who choose to have their loved ones buried in a Texas State Veterans Cemetery to determine the type or interment the family wishes. Options to be considered are a full-casketed burial, in-ground burial of cremated remains, a columbarium niche for cremated remains, or the scattering of ashes in the memorial garden.

The funeral home should ask the family to provide a copy of the military discharge form (DD Form 214) or other military service documents to ensure eligibility. If the funeral is for the spouse of a veteran, the funeral home should request a copy of the marriage certificate. The funeral home should contact the family's Veterans cemetery of choice and make all of the arrangements for the burial service.

Although viewing facilities are not available at the cemetery, and funeral services cannot be held at Texas State Veterans Cemeteries, a family may request that a final committal service be performed. Military Honors are performed during these committal services. Committal services are held in committal shelters, followed by burial at the grave site. Floral arrangements will accompany the casket or urn from the committal shelter to the grave site.

Some families may have retained cremated remains and wish to place them at a Texas State Veterans cemetery. If this is the case, the family may contact the cemetery directly, without going through a funeral home.

Please contact the Veterans Land Board toll free at 1-800-252-VETS (8387) for questions.

Shipping Cremated Remains

Effective December 26, 2013, the United States Postal Service (USPS) revised its mailing standards to require the use of Priority Mail Express service when shipping cremated remains. The USPS will no longer authorize cremated remains to be sent using Registered Mail service. The Cremation Association of North America advises mailers to adjust procedures regarding tracking packages and obtaining a copy of the return receipt.

Previously, cremated remains were not identifiable in the mail stream. Families could become upset if a package containing cremated remains could not be located while in the USPS's possession. Now, upon request, the USPS can place a special sticker on any cremated remains being mailed domestically or internationally. The Label 139, Cremated Remains, is not required but is recommended to increase visibility during USPS processing and transportation.

Preneed Funeral Contracts

The Texas Department of Banking (DOB) regulates prepaid funeral merchandise or services. Prepaid funeral merchandise and services is defined as goods and services sold on a prepaid basis directly to the public for use in connection with future funeral services. Along with the normal funeral service items, prepaid funeral merchandise and services also includes opening and closing of the grave and outer-burial containers. The term does not include a grave, marker, monument, tombstone, crypt, niche, plot, or lawn crypt unless it is sold in contemplation of trade for a funeral service or funeral merchandise.

Any funeral home or cemetery that sells prepaid funeral merchandise or services in Texas must have: (1) a trust-funded permit issued by the DOB or (2) sell through an insurance-funded permit holder.

In April, the Texas Finance Commission proposed an amendment to 7 TAC §25.1 containing a new definition for a third party provider and adding a reference to the third party provider in the non-guaranteed cash advance items definition for a prepaid funeral contract (PFC).

The DOB offered the amendment because of the concern relating to the services that can be listed in Section B – Non-Guaranteed Cash Advance Items. The non-guaranteed section of the PFC states that only items delivered by “third parties” may be included in the non-guaranteed section of the PFC. Currently, the DOB views non-guaranteed items appearing on page two of the PFC as items limited to third-party transactions in which the permit holder has no control over its price. However, what constitutes a “third party” is not currently defined in the Texas Administrative Code.

Further information can be accessed at the DOB’s website at www.dob.texas.gov.

FTC Email Scam

An email with the subject line “Pending consumer complaint” supposedly from the FTC is not in fact from the FTC. The email falsely states that a complaint has been filed with the agency against their company. The FTC advises recipients not to click on any of the links or attachments with the email. Clicking on the links may install a virus or other spyware on the computer.

See www.consumer.ftc.gov/blog/pending-ftc-complaint-emails-are-fakes for more information.

Just for Fun



Agency Contact Information

Mailing Address

Texas Funeral Service Commission
PO Box 12217, Capitol Station
Austin, TX 78711

Physical Address

Texas Funeral Service Commission
333 Guadalupe Street, Ste. 2-110
Austin, TX 78701

Web Address

www.tfsc.texas.gov

Agency Directory

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Administrator of Compliance	Rodney van Oudekerke	(512) 936-2470
Executive Assistant/Office Manager/ Administrator of Licensing	Martha Gussoni	(512) 936-2468
Chief Financial Officer	Jennifer Noack	(512) 936-2474
Establishment & Crematory Licensing Technician	Nikki Smith	(512) 936-2479
Provisional Licensing Technician	Sarah Reyes	(512) 936-6552
Administrative Assistant/ Brochures	Maria Haynes	(512) 936-2421
Investigator	Jeff Morales	(512) 936-2466
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